

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 United States of America,
5 Plaintiff
6 v.
7 Ramon Desage, et al.,
8 Defendants
9

2:13-cr-00039-JAD-VCF
Order Granting in Part and Denying in
Part Leave to File Supplement
[ECF No. 174]

10 In this fraud prosecution, the government moves for leave to file supplemental briefing in
11 support of its appeal of the magistrate judge's order granting defendant Ramon Desage's motion to
12 compel production of 10 years worth of the victims' tax records.¹ Desage—who has not yet filed his
13 response to the government's appeal—opposes the government's request.² Because the government
14 failed to adequately address the applicable legal standards in its appeal, the magistrate judge's order
15 compels production of extensive victim tax records, and Desage has not yet filed his response, I find
16 that good cause for supplemental briefing exists. I therefore order the government to file a new
17 appeal that is complete in itself by **August 12, 2016**.

18 **Discussion**

19 Ramon Desage, who stands charged with a handful of offenses stemming from his alleged
20 orchestration of an investment-fraud scheme, successfully moved to compel the production of his
21 alleged victims' tax records, arguing that these records will show that the victims failed to report
22 cash payments from Desage—omissions that have significant impeachment value and are necessary
23 for his defense that the purported victims made loans rather than investments to Desage. Magistrate
24 Judge Ferenbach issued an order granting Desage's motion to compel the requested tax records on
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27 ¹ ECF No. 174.

28 ² ECF No. 175.

1 August 13, 2015;³ the government promptly appealed that order.⁴ The parties have stipulated to
2 multiple continuances of the deadline for Desage's response, and it is currently due on August 15,
3 2016.

4 The government—which is now represented by two new U.S. Attorneys—now moves for
5 leave to file supplemental briefing in support of its appeal of the magistrate judge's order.⁵ The
6 government represents that additional briefing is necessary to discuss 28 U.S.C. § 6103; alternatively,
7 it requests that I remand this matter to the magistrate judge with instructions to render specific
8 findings on how § 6103 permits the release of taxpayer-return information as requested by Desage.⁶
9 Desage responds that supplemental briefing is not appropriate at this belated date and that the
10 government has not shown good cause.⁷

11 The magistrate judge's order is only four pages long and the government's currently pending
12 appeal of that order does not address why § 6103 renders the order clearly erroneous or contrary to
13 law. The new U.S. attorneys assigned to this case represent that the disclosure of taxpayer-return
14 information is strictly and exclusively regulated by § 6103. I find that additional briefing on this
15 issue, including § 6103's interaction with Federal Rule of Criminal Procedure 16 and the Jencks Act,
16 would be helpful and is in the interests of justice because volumes of victim tax records are at issue.
17 I also do not find that Desage will be prejudiced by this revised briefing schedule. The parties have
18 agreed to continue Desage's response deadline seven times resulting in a stipulated delay of almost
19 one year, and this order will only further delay the conclusion of briefing on the government's appeal
20 by nine days.

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22 ³ ECF No. 121.

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24 ⁴ ECF No. 127. One of the victims filed a motion for joinder to the government's appeal. ECF No.
25 129. That victim also moves for relief from that order under the Crime Victim Rights Act. ECF No.
26 128.

27 ⁵ ECF No. 174.

28 ⁶ *Id.* at 8.

⁷ ECF No. 175 at 4.

1 I therefore grant in part and deny in part the government's motion and give the government
2 until August 12, 2016, to file a new, complete appeal. Desage will have 14 days from service of the
3 governments's appeal to file a response, and the government will have seven days from service of
4 Desage's response to file a reply. Both parties must address the applicability of 26 U.S.C. § 6103 to
5 the magistrate judge's order and to the production of the specific requested tax records.

6 **Conclusion**

7 Accordingly, IT IS HEREBY ORDERED that the **government's motion for leave to file**
8 **supplement [ECF No. 174] is granted in part and denied in part.**

9 IT IS FURTHER ORDERED that the **government's appeal is due by August 12, 2016.**

10 Dated this 5th day of August, 2016.

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12 Jennifer A. Dorsey
13 United States District Judge
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